Supreme Court, U.S.
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No. 90-1802

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

NATIONWIDE MUTUAL INSURANCE COMPANY,
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, and
NATIONWIDE LIFE INSURANCE COMPANY,
Petitioners,

v.

ROBERT T. DARDEN,
Respondent.

On Writ Of Certiorari
To The United States Court
Of Appeals For The Fourth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 22, 1991
CERTIORARI GRANTED OCTOBER 15, 1991

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA
FAYETTEVILLE DIVISION

No. 83-96-CIV-3

Robert T. Darden, *Plaintiff*
v.

Nationwide Mutual Insurance Company, et al.,
Defendants

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
11/08/83	COMPLAINT
11/28/83	MOTION & ORDER FOR EXTENTION [sic] OF TIME to & including 12/28/83 to respond to complaint allowed by clerk.
12/27/83	ANSWER—by deft with Motion to Dismiss incl. in answer.
02/02/84	ORDER—Judge Fox—Motion to dismiss for lack of subject matter jurisdiction DENIED without prejudice.
10/01/84	DEFTS' MOTION FOR SUMMARY JUDGMENT. MEMORANDUM IN SUPPORT OF DEFTS' MOTION FOR SUMMARY JUDGMENT. DEPOSITIONS OF: WILLIAM R. MAYO, ELTON PARKER, & BERNARD HARRIS PARKER.

10/17/84 PTFF'S RESPONSE TO DEFTS' MOTION FOR SUMMARY JUDGMENT & DEFTS' MOTION TO DISMISS PURSUANT TO RULE 12(b)(1).

10/29/84 DEFTS' RESPONE [sic] TO PTFF'S MOTION FOR SUMMARY JUDGMENT.

12/21/84 Case referred to Mag. for M&R. Case file to Mag. McCotter.

03/08/85 MEMORANDUM & RECOMMENDATION—Mag. McCotter—ptff's motion for summary judgment should be granted

04/05/85 DEFENDANTS' OBJECTIONS TO MAGISTRATE'S MEMORANDUM AND RECOMMENDATIONS—by defts. w/affidavits and exh. attchd.

04/26/85 PTFF'S RESPONSE TO DEFTS' OBJECTIONS TO MAGISTRATE'S MEMORANDUM & RECOMMENDATIONS.

05/23/85 ORDER—Judge Boyle—defts' motion for summary judgment allowed.

05/23/85 JUDGMENT ON DECISION BY THE COURT—per order of Judge Boyle filed 5-23-85, defts motion for summary judgment is ALLOWED.

06/18/85 NOTICE OF APPEAL by ptff.

06/20/85 NOTICE OF APPELLATE ACTION to 4th Circuit.

07/17/86 PUBLISHED OPINION—4TH CIRCUIT—VACATED AND REMANDED.

09/26/86 MANDATE—FOURTH CIRCUIT—VACATED AND REMANDED. Rec'd. Record on Appeal Case reopened.

03/23/87 MOTION FOR SUMMARY JUDGMENT by ptff.
PTFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.
DEFT'S RESPONSES TO PTFF'S INTERROGATORIES in support of ptff's motion for summary judgment, with index to documents produced by deft. pursuant to request for production.
DEPOSITION OF HERB BOWMAN
DEPOSITION OF MIKE COLLVER
DEPOSITION OF KEN BONVALLET

03/24/87 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

03/24/87 MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

04/10/87 DEPOSITION—OF ROBERT T. DARDEN TAKEN ON 2-19-87

04/13/87 PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

04/13/87 MEMORANDUM OF DEFENDANTS IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

04/22/87 MEMORANDUM OF DEFENDANTS IN REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

10/09/87 DEFENDANTS' SUPPLEMENTAL MEMORANDUM WITH RESPECT TO CROSS MOTIONS FOR SUMMARY JUDGMENT

06/22/88 ORDER—Judge Boyle—The court finds that the question of whether Darden is an "employee" under ERISA is still unsuitable for summary judgment disposition; and the parties' cross motion for summary judgment on that ground are DENIED. The court finds that the question of whether the DCIC plan is a "pension plant" [sic] under ERISA is also inappropriate for summary judgment disposition and accordingly motions made on this ground are DENIED. The case will be restored to the trial calendar and the trial will be limited to the questions of whether DARDEN is an "employee" and whether the DCIC plan is a "pension plan" under the factors as set forth in the Court of Appeals opinion. All motions for summary judgment are DENIED. The clerk is directed to replace this action on the trial calendar.

07/29/88 ORDER—Judge Boyle—Defts motion to strike pltf's jury demand is GRANTED.

09/19/88 PLTF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—w/c.s.
DEFS'. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—w/c.s.

04/05/89 PLAINTIFF AND DEFENDANTS' STIPULATIONS AS TO FINDINGS OF FACT

MEMORANDUM OPINION—Judge Boyle—The Court concludes that the Deferred Compensation Plan is subject to the nonforfeiture provisions of § 1053(a). Plaintiff Darden is entitled to receive his accrued deferred compensation benefits when he attins [sic] the age of 60.

07/05/89 JUDGMENT IN A CIVIL CASE—Pursuant to the Court's order filed 7-5-89, the court concludes that the Deferred Compensation Plan is subject to the nonforfeiture provisions of § 1053(a), and Darden is entitled to receive his accrued deferred compensaiton [sic] beneifts [sic] when he attains the age of 60.

07/12/89 NOTICE OF APPEAL w/cs—by deft. attys

07/24/89 NOTICE OF CROSS-APPEAL w/cs—by pltf. atty.

08/08/89 MAILED NOTICES OF APPEAL TO US COURT OF APPEALS including filed copies of notices, cc of orders appealed from, index and trans. ltr. CC of filed notices to Judge Boyle. CC to pltf. and deft.

01/01/91 PUBLISHED OPINION OF THE US COURT OF APPEALS—Affirmed.

03/01/91 ORDER It is ordered that the petition for rehearing and suggestion for rehearing in [sic] banc are denied. John Greacen, Clerk U.S. Court of Appeals., lc Judge Boyle. (ent. 3-1-91) ms.

03/04/91 JUDGMENT U.S. COURT OF APPEALS—On consideration whereof, it is now her [sic] ordered and adjudged by thsi [sic] court that the judgment of the said District Court appealed from, in theses [sic] causes be, and the same is hereby affirmed.

ORDER U.S. COURT OF APPEALS—The court denied appellee/cross appellant's bill of costs.

CASE FILE RECEIVED FROM U.S. COURT OF APPEALS CONSISTING OF 5 VOLUMES.

NOTICE OF FILING OF PETITION FOR CERTIORARI IN THIS CASE HAS BEEN RECEIVED FROM THE SUPREME COURT.

07/12/91 NOTICE OF FILING OF PETITION FOR CERTIORARI IN THIS CASE HAS BEEN RECEIVED FROM THE Supreme Court.

10/21/91 ORDER from the Supreme Court (90-1953) stating petition for a writ of certiorari is DENIED.

10/21/91 ORDER from the Supreme Court (90-1802) stating petition for a writ of certiorari is GRANTED.

AGENT'S AGREEMENT

PREFACE

It is the intent of this Agreement to define the conditions governing the business relationship between the parties involved. Only if both parties understand their duties and responsibilities can a mutually satisfactory relationship be established and maintained. The overall objectives of this Agreement are:

1. To provide a relationship which will result in the best possible service to the customer.
2. To assist the Agent in establishing and maintaining a growing agency which is profitable to both the Agent and the Companies.
3. To maintain the Companies' financial strength at the level necessary to protect the policyholders' interests.

AGENCY APPOINTMENT

Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Life Insurance Company, Nationwide General Insurance Company, collectively referred to in this Agreement as "we", "us" "Nationwide" or the "the Companies", insurance corporations organized and existing under the laws of the State of Ohio with their principal offices located at Columbus, Ohio, appoint

R. T. Darden
name

referred to in this Agreement as "you" or the "Agent" of 2902 Highway 87 N., Spring Lake, N.C. Cumberland
Street-Route City State County

as an agent to represent the Companies in North Carolina, while properly licensed so to act in accordance with the provisions of this Agreement. This Agreement is to become effective
January 1 , 1977.

1. Independent Contractor. The parties agree that the purpose of this Agreement will be best served by your acting as an independent contractor. Therefore, it is agreed that you are an independent contractor for all purposes. As an independent contractor, you have the right to exercise independent judgment as to time, place, and manner of soliciting insurance, servicing policyholders, and otherwise carrying out the provisions of this Agreement. Insurance being a closely regulated business, it is understood that it will be necessary for us to provide you with certain manuals, forms, records, and such other materials and supplies as are necessary in the conduct of an insurance business. All such property furnished to you by the Companies or on behalf of the Companies shall remain the property of the Companies and be returned to them in good condition upon any cancellation of this Agreement. We may offer to you, from time to time, training, counsel, and guidance based upon our accumulated experience in the sale and servicing of business. However, it is understood that you may reject or accept such offers at your discretion.

2. Expenses. As an independent contractor, you will pay all expenses in connection with your Nationwide insurance agency. You will not incur any indebtedness on behalf of us in connection with expenses resulting from your Nationwide agency. As an independent contractor, you will be responsible for securing and keeping in effect any required license to represent us as an agent. You agree not to solicit any lines of insurance unless you have the required license authorizing you to do so.

3. Licenses. As an independent contractor, you will be responsible for securing and keeping in effect any required license to represent us as an agent. You agree not to solicit any lines of insurance unless you have the required license authorizing you to do so.

   Set forth below are the types of licenses you hold and the date acquired:

Casualty	September 1 , 1960
Health and Accident	September 1 , 1960
Fire and Inland Marine	September 1 , 1960
Life	September 1 , 1960

4. Exclusive Representation. It is agreed and understood that you will represent us exclusively in the sale and service of insurance. Such exclusive representation shall mean that you will *not solicit or write policies* of insurance in companies other than those parties to this Agreement, either directly or indirectly, without the written consent of these Companies. It is not intended that the incidental use of voluntary or statutory state or federal insurance plans or other similar agreements, shall be a violation of this clause.

5. General Conduct and Representation. You will maintain a good reputation in the community which you serve and will direct your efforts in the field of insurance toward advancing the business and interest of the Companies to the best of your ability. In the conduct of your business, you will comply with all applicable insurance laws and regulations.

6. Company Funds. All funds coming into your possession from customers as premiums or considerations for insurance policies issued by the Companies are funds of the Companies received by you in a fiduciary capacity and shall be immediately remitted to us. If any such funds are not remitted to us, we shall have a first

lien on all compensation due or which may become due you to the extent of such funds. Each of the Companies is authorized to deduct the entire amount of such funds due, either before or after the cancellation of the Agreement, from any compensation due you.

7. Compensation. Any compensation due you under this Agreement from any of the Companies, may be paid, to you, on their behalf, by any of the other Companies. For all services rendered under this Agreement by you, you shall be compensated solely in accordance with the General Conditions and the Schedules of each Company, attached hereto and made a part hereof except for such additional compensation payable to you under paragraph 11.

   It is agreed that we will pay you any and all original and renewal commissions earned by you, but not credited to your account at the time of entering into this Agreement, on business written by you while employed by us under our Agent's Employment Agreement. It is understood, however, that we may deduct from any compensation due you under this Agreement any commissions previously credited to your account while an employee agent, which subsequently become unearned as a result of the termination or lapse of any policy or coverage.

   Should any Company desire to amend its General Conditions or Schedules, notification in writing of such amendment shall be given to you prior to its effective date, and shall become a part of this contract on its effective date.

8. Overpayment of Compensation. Any compensation paid to you for premiums later returned or credited to the customer or any other overpayment of compensation shall be a debt due us from you. In addition to all other rights available to us as a creditor, we shall

have the right to deduct such compensation or overpayment from any future compensation due you.

9. Cancellation. This Agreement shall continue from its effective date until the end of the current year and shall be automatically renewed thereafter from year to year unless sooner cancelled.

   This Agreement shall automatically cancel upon the date your license to act as an agent for the Companies is revoked or cancelled, or upon your death, or normal retirement at age sixty-five (65). Further, due to the personal nature of our relationship you or the Companies have the right to cancel this Agreement at any time after written notice has been delivered to the other or mailed to the other's last known address. It is understood that the Agent shall have access to the Agents Administration Review Board, and its procedures, as it may exist from time to time.

10. Service to Customer Upon Cancellation. Upon cancellation of this Agreement, it is understood that the Companies retain the right to continue to provide insurance services to any and all customers and to continue to solicit such customers for additional business.

11. Agent's Security Compensation.

    a. Computation of Deferred Compensation Incentive Credits.

       For each full calendar year you act as an agent for the Companies, beginning in the year you complete your fifth year as an agent with the Companies, until you are age sixty-five (65), the Companies will credit to your account, as Deferred Compensation Incentive Credits, the following percentage of your original and renewal service fee earnings, including earnings from Heritage Securities, Inc., but excluding earnings from JUA's, reinsurance facilities, AIP's, and line 19 auto business.

3% of such earnings from $10,000 to $14,999.99 inclusive

6% of such earnings from $15,000 to $19,999.99 inclusive

10% of such earnings from $20,000 to $24,999.99 inclusive

15% of such earnings in excess of $24,999.99

b. Extended Earnings Payable Upon Qualified Cancellation of this Agreement.

Upon completion of your fifth year of service with the Companies as an agent, the Companies will pay to you as Extended Earnings, upon qualified cancellation of this Agreement, an amount equal to the renewal service fees paid to you by each Company for the last full twelve (12) calendar months immediately preceding such termination, subject to the following exceptions:

(1) Renewal service fees earned from JUA's and state AIP's, shall be excluded.

(2) For purposes of extended earnings renewal service fees shall be reduced by 50% on reinsurance facility and line 19 auto business.

(3) Extended earnings on Nationwide General business shall be calculated at 70% of the last 12 months total compensation paid to you on such business.

c. Amounts Payable Upon Qualified Cancellation

(1) If you live until retirement, you will receive your Extended Earnings, provided you have completed five years of service with the Companies as an agent. In addition, you will receive Deferred Compensation Incentive Credits in ac-

cordance with the provisions outlined in paragraph 11-c(3) and 11-d(2).

(2) If you die or become totally and permanently disabled which results in the cancellation of Agreement, provided that you have completed five years of service with the Companies as an agent, you or your beneficiary, or the estate of your beneficiary, will receive your Extended Earnings and 100% of your accumulated Deferred Compensation Incentive Credits.

(3) If at the time this Agreement is cancelled you have completed at least five years of service with the Companies as an agent, you will receive the Extended Earnings. Deferred Compensation Incentive Credits will be paid to you in accordance with the following schedule and the provisions of paragraph 11-d(2):

(a) 50% of Benefit Payable—When age plus length of service as agent equals the sum of 45.

(b) 10% Additional Benefit Payable for each year of service after the sum of 45 as defined in paragraph (a) above is attained, subject to a maximum, under (a) and (b), of 100% of such benefit.

d. Provisions for Payment

After deducting any amount paid to you under this paragraph for cancellation or termination of any prior Agreement, or as extended renewal service fees under any former agreement, or any amounts due the Companies from you, the Companies will pay to you, or should you not survive, your beneficiary or the estate of your beneficiary:

(1) Your Extended Earnings divided into three (3) equal parts as follows:

Commencing within sixty (60) days following qualified cancellation of this Agreement:

The first part shall be payable in twelve (12) equal monthly installments, each monthly installment after the first on the first day of subsequent consecutive months.

The remaining parts shall be paid in equal annual installments, the first annual installment payable thirty (30) days after payment of the last monthly installment and each other annual installment thereafter on the anniversary of that date until paid. At your election prior to your cancellation, such annual installments may be made in equal monthly payments.

(2) The amount of Deferred Compensation Incentive Credits to which you are entitled payable in three (3) equal parts as follows:

Commencing sixty (60) days after your death or total and permanent disability which results in the cancellation of this Agreement, or sixty (60) days after qualified cancellation of this Agreement.

It is understood that in the event such payments would commence prior to age 60, for reasons other than death or total and permanent disability, such payments shall be reduced to the percentages shown in the following table:

Age At Which Benefit Payments Commence	Percent of Accrued Benefits To be Paid
60	100.00%
59	94.34%
58	89.00%
57	83.96%
56	79.21%
55	74.73%
54	70.50%
53	66.51%
52	62.74%
51	59.19%
50	55.84%
Under 50	None

These sums shall be payable as outlined in d(1) above.

(3) Election for Different Payment.

At your written election, received by the Companies prior to the time of cancellation of this Agreement the Companies will agree to make payments under one of the following methods. Amounts payable as Deferred Compensation Incentive Credits, regardless of election, are not payable prior to your reaching age fifty (50) except in the case of death or total and permanent disability.

(a) To make payments in not less than three (3) nor more than ten (10) equal parts.

Commencing within sixty (60) days after qualified cancellation or such other later date as provided by the election and the terms of this

Agreement, and the parts shall be payable as in d-(1) above.

(b) To pay to you the amounts payable in accordance with paragraph 11, under one of the following three forms of annuity benefits. Such benefits to be determined as actuarial equivalent amounts in accordance with such interest rates and mortality tables as adopted by the Companies for this purpose.

1. Life Annuity—No Death Benefit

2. Life Annuity—Installment Refund, or

3. Life Annuity—Joint and Survivorship

Payments shall commence within sixty (60) days after qualified cancellation or such other later date as provided by the election and the terms of this Agreement.

(c) To divide the amounts payable to you as you elect, paying part in equal annual installments, not less than three (3) nor more than ten (10), with the balance payable under subparagraph (b) above.

The amount payable as equal annual installments shall be paid as provided in subparagraph (a) and the balance as in subparagraph (b).

(4) Payment in Event of Employment.

If this Agreement is cancelled as a result of your employment by the Companies, payments to you shall be deferred until your separation from the Companies, death or total and permanent disability. At that time, payment shall commence as provided by this paragraph 11 as if employment had not intervened.

e. Qualified Cancellation.

Unless you have induced or attempted to induce, either directly or indirectly, policyholders to lapse, cancel, or replace any insurance contract in force with the Companies, the cancellation of this Agreement shall be a qualified cancellation for the purpose of this Agreement.

f. Cessation of Agent's Security Compensation.

All liability of the Companies for Agent's Security Compensation provided for in paragraph 11 and its subparagraphs shall cease and terminate in the event any one or more of the following shall occur:

(1) You either directly or indirectly, by and for yourself or as an agent for another, or through others as their agent, engage in or be licensed as an agent, solicitor, representative or broker or in anyway be connected with the fire, casualty, health, or life insurance business, within one year following cancellation within a 25 mile radius of your business location at that time; or

(2) You fail to return in good condition, within ten days, all materials, records, and supplies furnished to you by the Companies during the course of this Agreement, together with any copies thereof; or

(3) After cancellation of this Agreement, you directly or indirectly induce, attempt to induce, or assist anyone else in inducing or attempting to induce policyholders to lapse, cancel, or replace any insurance contract in force with the Companies; furnish any other person or organization with the name of any policyholder of the Companies so as to facilitate the solicitation by others of any policyholder for insurance or for any other purpose.

g. The Agent's Security Compensation is intended to be in lieu of the compensation and/or benefits awarded by any state statute or regulation. If you elect any benefits of any such statute or regulation then the amount of such benefits so received shall be deducted from the benefits due you under paragraph 11. If the exact amounts of any such statutory or regulatory benefits are known at the time of the cancellation of this agreement, then this deduction shall be immediately made and the balance of such benefits under paragraph 11 shall commence as provided for under the provision of paragraph 11. If the exact amount of such statutory or regulatory benefits are not known at the time of the cancellation of this agreement, then the payment of any benefits under paragraph 11 shall be deferred until such time as the amount of such statutory or regulatory benefits becomes known.

h. Amendments and Termination.

The Companies hope and expect to continue the Agent's Security Compensation Plan indefinitely, and every effort has been made to meet future conditions. In order to protect you and the Companies against unforeseen conditions however, the right to amend or terminate this plan is necessarily reserved by the the [sic] Companies. The Companies may terminate this plan by notification, at least sixty (60) days prior to such termination, in writing. No change in the Plan or termination however can alter or modify rights or benefits received or granted prior to such change or termination.

12. Agent's Activities After Cancellation. (Applicable only to agents entering an independent contractor's agreement for the first time on and after July 1, 1969.)

You agree that if the Agreement is cancelled within a period of five years from the date of your first

contract as an agent with the Company, you will not, either directly or indirectly, by and for yourself or as agent for another or through others as their agent, engage in or be licensed as an agent, solicitor, representative, or broker or in any way be connected with the fire, casualty, health, or life insurance business, within a 25 mile radius of your last business location for a period of one year from the date of the voluntary or involuntary cancellation of this Agreement or should we find it necessary by legal action to enjoin you from competing with us, one year after the date such injunction is obtained.

In any jurisdiction where a covenant similar to that appearing above is held to be invalid either by statute or by judicial decision, you agree upon cancellation of this Agreement you shall thereafter refrain from further solicitation or servicing of policyholders of the Companies and from interfering in any way for a period of one year with existing policies and policyholders in the geographical area described above.

In the event that we are successful in any suit or proceeding brought or instituted by us to enforce any of the provisions of this Agreement or on account of any damages sustained by us by reason of the violation by you of the terms and/or provisions of the Agreement, you agree to pay to us such reasonable attorneys' fees as are permitted by statute and fixed by the court.

13. Agent Number. For the benefit of the Companies and the agent, a number is assigned to each agent to facilitate more efficient use of the Companies computer system. This number is the property of the Companies and may be reassigned for identification within that system. Your name will be printed for your benefit on billings and materials received by our policyholders. If this agreement is cancelled, your name will be re-

moved as soon as possible, but you acknowledge that occasional error may cause it to continue to be printed.

14. Pricing, Products, Rules, and Regulations. The insurance business being subject to changing laws, regulations, and conditions, it is understood and agreed that each Company will prescribe rules, regulations, prices, and terms under which it will insure risks, and each Company retains the right to change, alter or amend such rules, regulations, prices, and terms, including the right to limit, restrict, or discontinue entirely the acceptance or writing of any policies, coverages, line or kinds of insurance, at any time it deems it advisable to do so, and without notice to or consent of the Agent, and any such change, alteration, amendment or limitation shall become effective on the date specified by the Company.

15. Authorization to Direct Bill. The agent and the Companies agree that it is to their mutual benefit for the Companies to bill the policyholders directly. The agent hereby gives the Companies permission to use his name on those billings and for use of his name for a reasonable period following the cancellation of his agreement.

16. Extent of Authority. You will obligate us only to the extent authorized by the rules and regulations set forth by us from time to time, or as may be authorized in writing by an officer of the Companies.

17. Amendments or Modifications. Except as otherwise provided herein, this Agreement may be changed, altered or modified only in writing signed by you and an officer of the Companies.

18. Assignment of Agreement. The Companies rely upon your particular personal abilities in carrying out your obligations under this Agreement, therefore, no assignment of your rights, responsibilities, or any sums

due you under this Agreement shall be made without prior written consent signed by an officer of the Companies.

19. Agreement Defined, Prior Agreements Superseded. Whenever used in this Agreement, the term "Agreement" shall mean any contract in writing captioned "Standard Agent's Agreement", "Master Agent's Agreement", "Agents Employment Agreement" or "Corporate Agency Agreement" between you and the Companies executing this Agreement. The execution and delivery of this Agreement shall supersede and take the place of any prior Agreement, provided that the execution and delivery of this Agreement shall not affect your obligation to pay any money due the Companies from you under the provisions of any other agreement, written or oral, nor shall the execution of this Agreement nullify any negotiated compensation agreement, differing from the schedules of compensation attached to former agreements, entered into between you and the Companies on cases written prior to the execution of this agreement.

20. Severability. If any clause or part of this Agreement shall be held invalid for any reason, then such invalidity shall not affect any part of this Agreement and the parts thereof not invalid shall remain in full force and effect.

21. Legal Action Under This Agreement. It is agreed that no action, suit, proceeding at law or in equity shall be brought under this contract unless it is commenced and process is served within three years after the cause of action for which suit is brought. If the limitations set forth in this paragraph are prohibited by the statutes of the state in which this Agreement is issued, then these limitations shall be deemed amended to agree with the minimum period of limitation permitted by such statutes.

IN WITNESS WHEREOF, the Agent has signed his name and the Companies have caused their corporate names to be affixed by their duly authorized representative to duplicate copies hereof.

Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company
Nationwide Life Insurance Company
Nationwide General Insurance Company

By /s/ Signature illegible 12/2/76
For the Companies Date

/s/ Robert T. Darden 12/2/76
Agent Date

Termination Letter

NATIONWIDE
INSURANCE

October 29, 1980

Mr. R. T. Darden
Box 526
102 Highway 210
Spring Lake, North Carolina 28390

Re: Notice of Cancellation of Agent's Agreement
Nationwide Mutual Insurance Company
Nationwide Life Insurance Company
Nationwide Fire Insurance Company

Dear Mr. Darden:

It is with regret that we find it necessary to cancel your Agent's Agreement.

Notice has been mailed to the State Insurance Department cancelling your licenses to represent the Nationwide Insurance Companies as an Agent, effective November 13, 1980.

If at any time you are called upon to render any services to our policyholders, please direct them to our District Sales Manager, Billy G. Kiker, P.O. Drawer 40137, 2551 Ravenhill Road, Fayetteville, North Carolina 28302. If you have not already done so, please return all Nationwide manuals, portfolios, reference guides, policies and other supplies and the policyholder files to the District Sales Manager as soon as possible.

I am very sorry that things have not worked out as we both would have desired. May I convey my best wishes and the best wishes of the Companies to you in your future endeavors.

Sincerely,

/s/ William R. Mayo

William R. Mayo
Regional Sales Manager

WRM/bsm

cc: B. H. Parker, Regional Vice President—Regional Manager
C. S. Byers, Regional Sales Superintendent
E. C. Parker, Regional Personnel Manager

Memorandum

To: Bernard H. Parker December 11, 1980
From: C. S. Byers

RE: Robert T. Darden, NC #2414
Agency Service

As you know, the quality of the business in this Agency is below standard as reflected by its loss experience. For this reason, it is important that we take steps to provide service and at the same time, screen-out the negative business. To the extent possible, we desire to steer this business to Agent Darden. The Quality Multi-Line business, and that portion of the Voluntary Personal Auto that is good, should be parceled out to the existing Agents. This can best be accomplished through a cooperative effort by the Sales and Underwriting Departments.

Larry Hall and I have agreed to a procedure whereby Sales will hire a full-time, temporary secretary to service this business from the Fayetteville District Office. (We have learned that a former, long-time Agency secretary may be available to us to fill this position.) Special arrangements will be made with an Underwriter for this secretary to call in and get an immediate evaluation of those risks requesting service. A determination will be made at that time as to the desirability of the case and its reassignment to an Agent. On those cases that are either undesirable or residual, an attempt will be made to steer the customer to Darden. Simultaneous with this action, the case will be re-underwritten with stripping and ceding actions taken as necessary. The negative business will not be reassigned to an existing Agent. At the same time, a systematic review of Policyholder Listings will be made to identify those quality customers having both Voluntary Auto and Homeowners policies with Nationwide. After screening, these select customers will be given priority attention for Agent assignment.

Fortunately, Agent Darden has acquired a voluntary company and is in the process of transferring the business to them. This action is definitely in our best interest.

Because of the size of this Agency, it is likely that this temporary support will be needed for from three-to-six-months. I am attaching a requisition for your approval for this temporary position. We will be able to time our hiring actions in the Sales Department during this period so that the FTE required by this hire will be within Budget.

I would appreciate your approval so that we can activate this program as quickly as possible.

df
[Attachment excluded]

In the United States District Court
For the Eastern District of North Carolina
Fayetteville Division

File No. 83-96-CIV-3

Robert T. Darden,

Plaintiff,

vs.

Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, and Nationwide Life Insurance Company,

Defendants.

Deposition
of
Robert T. Darden

In Raleigh, North Carolina
February 19, 1987
10:30 a.m.
Reported by: F. M. Harvey

• • • • •

Mr. Darden Direct Page 16

Q And if instead of trying to sell insurance during a given portion of a day—instead of choosing to do that you chose to go down to Cross Creek Savings & Loan, where you had $20,000, for example, and negotiate with the banker about extending the CD or whatever you had in order to get it at a higher rate of interest or take it out or move it or transfer it or do whatever you wanted to, you were free to do that, weren't you?

A I was.

Q You were free to look after insurance business or any other kind of business at all times, weren't you?

A Yes, I was.

• • • • •

Mr. Darden Direct Page 40

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Q And you sold them all kinds of business, didn't you?

A All types—life, health, automobile, commercial.

Q Fire?

A Fire, homeowners, mutual funds.

• • • • •

Q What did you do when you left Nationwide? Did you write all those 12 to 15 hundred people a letter? I don't suppose you could call that many people on the

Mr. Darden Direct Page 41

telephone without going crazy, could you?

A I sent a letter notifying that I was no longer with Nationwide and that I was independent and would like to continue to service their business.

Q And you expected to get some of that business, and you did, didn't you?

A Yes, sir.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 83-96-CIV-3

ROBERT T. DARDEN,

Plaintiff

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY and NATIONWIDE LIFE INSURANCE COMPANY,

Defendants

Second Affidavit of
Herbert W. Bowman

I, Herbert W. Bowman, having been duly sworn and cautioned, do hereby state as follows:

1. I am an employee of the Nationwide Mutual Insurance Company.

2. My position is that of Director of Agency Planning and Sales Compensation in the Marketing Services Department. In that position, I am responsible for agent compensation, agency relations, and agent manpower planning.

3. Due to my knowledge of the subject matter, and due to the scope of my duties, I have been asked to

compile a list of some of the potential reasons why a Nationwide agent would elect to remain with the Nationwide Insurance Companies as opposed to leaving Nationwide and writing insurance for companies other than Nationwide. Below is a list of some of the potential reasons:

• • • • •

p. Nationwide has management consulting assistance for the agent if the agent expresses a need for this.

q. Nationwide has recruiting, selection and training services available for the agents if they so desire for adding agency employees.

• • • • •

/s/ Herbert W. Bowman
Herbert W. Bowman

Sworn to and subscribed before me this 21st day of March, 1987.

/s/ Signature illegible
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

NO. 83-96-CIV-3

ROBERT T. DARDEN,

Plaintiff

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY and NATIONWIDE LIFE INSURANCE COMPANY,

Defendants

Third Affidavit of
Herbert W. Bowman

I, Herbert W. Bowman, having been duly sworn and cautioned, do hereby state as follows:

1. I am employed by the Nationwide Mutual Insurance Company.

2. My position is that of Director of Agency Planning and Sales Compensation in the Marketing Services Department.

3. In that position, I am responsible for agent compensation and benefits, agency relations, and agent manpower planning.

* * * * *

Another method of communication was the Regional Round Table-Agent Advisory Counsel. This communication system was started in either the late 1950's or early 1960's,

and was in existence up until the early 1980's. The system's roots were at the district level. Once per year, a meeting was called at the district level. Agents in that district had the opportunity to attend if they so desired. The purpose of that meeting was for the agents to have the opportunity to discuss any issues, concerns, or suggestions that they had and that they wished the Companies to be aware of. These issues, concerns and suggestions, varied greatly, ranging from the topics of rates, compensation, benefits, product design, claim handling, underwriting rules, etc. At the district meeting, one district representative would be elected by those who attended the meeting. Issues that were then raised at the district meeting would be taken by the representative to the next level meeting, which was a meeting held at the sales region level. Representatives from numerous districts would present the concerns, issues and suggestions that each of their districts had raised. The group would then vote on several of the more important concerns, issues and suggestions to take to the next level, which was the regional level. At the regional level, several representatives representing the various sales regions would be present, and would present the issues, suggestions, and concerns that each of their sales regions had voted to present. At the Regional meeting, the Vice President Regional Manager was present, along with his or her cabinet members for considering the issues raised. At the regional level there was a regional representative elected for the purpose of representing the region's agents at the Home Office Agent Advisory Council meeting, which was also held once per year. The Agent Advisory Council meeting was held in the Home Office, with one representative and one alternate attending from each region. They then raised the concerns, issues and suggestions that had been voted on by the agents at the regional level. The meeting was usually chaired by a Vice-President in Marketing, and was attended by the several Line Operations Vice-Presidents. In addition, the Chairman

of the meeting would usually invite the Home Office personnel from the department to which the concern, issue, or suggestion was applicable. At each level of the system, the concerns, issues, and suggestions were considered, and if they could be answered or adopted at that level, they were. If not, the issue would proceed to the next level. At each level there was also a report-back system set in place, so that the agents would either have a response to their concerns or issues, would know that their suggestion had been considered, even sometimes adopted by the Companies. This entire system was a very valuable tool in communicating with the agents, and vice versa.

One example of the potential input that the Agents had via this system is as follows:

— From 1951-1969, Nationwide maintained an "Agents Retirement Plan." This plan was a nonqualified deferred compensation plan to which both the agent and Nationwide contributed a percentage of the agent's annual earnings not in excess of $10,000 towards an annuity payable at retirement. The maximum annual contributions was $600. Nationwide also maintained an "Extended Earnings Plan" that paid an agent a specified percentage of his last 12 months' renewal commissions if Nationwide cancelled his contract (but *not* if the agent resigned or retired).

— In 1966 and early 1967, Nationwide became aware that the Agents Retirement Plan was no longer serving its intended purpose. In particular, agents were concerned that (a) the level of benefits was inadequate, (b) the ceiling on contributions was outdated, (c) the vesting schedule was too slow, and (d) the compulsory agent contributions might to invested to better effect in other ways, specifically including Keogh plans (authorized by Congress in 1962). Regarding the "Extended Earnings Plan", the agents were concerned because the Plan paid those agents whose contracts were cancelled by Nationwide, and not those who

the agents thought should be getting paid, those who retired, died or became disabled.

— In May 1967, Nationwide management approached the Agents Advisory Council with respect to agent interest in restructuring this program. The Council supported a redesign of the program with an emphasis primarily on retirement and secondarily on death or termination.

— In February 1968, a special meeting of the Advisory Council was convened to present a tentative redesign of the program. This meeting was held *prior* to approval of the new plan by senior management or the Board of Directors, so that agent input could be incorporated into the final proposal. The tentative design proposed was essentially what became the Agents Security Compensation Plan ("Plan"), including the 5-year eligibility requirement and the Extended Earnings and DCIC components. (DCIC was referred to as "Retirement Income Credits" or "RIC" until 1976. For simplicity, however, the "DCIC" terminology is used throughout.) This initial draft of the Plan also proposed forfeiture of benefits in the event of (a) termination as an agent for failure to pay over moneys due Nationwide, for inducing policyholder lapse or replacement, for violation of the law or for employment by Nationwide, (b) competition inside a 25-mile radius within a year of termination, (c) inducing policyholder lapse or replacement after termination or (d) any competition by NADP agents within five years. After extended discussion, the consensus of the Council was that the proposal was a significant improvement that merited further development. However, the Council urged Nationwide to consider (i) accruing DCIC benefits on earnings under $10,000, (ii) including all types of commissions in the DCIC computation (rather than only renewal commissions, as proposed), (iii) adding a vesting schedule that would permit payment of partial benefits upon early retirement (not provided for in the initial draft) and (iv) elimination of the forfeiture provision for certain terminations (provision (a) above). It appears from avail-

able records that no objection was raised with respect to forfeiture provisions (b) and (c) above.

— Management revised the draft Plan in light of the views of the Advisory Council (among others). This revised draft included three of the four principal changes urged by the Council: a vesting schedule for early retirement (age 50 with 10 years of service), an expanded commission base for DCIC, and elimination of the forfeiture provision (provision (a) above) that concerned the Council. DCIC credits on earnings under $10,000 was not included because it would be counterproductive to the Plan's objective of encouraging agency growth. In May 1968, the revised draft Plan was presented to and discussed with the Advisory Council at its regular meeting.

— The Plan was approved by senior management and implemented effective July 1, 1969. The new Plan was communicated to agents generally through meetings that included a film and other materials.

* * * * *

/s/ Herbert W. Bowman
Herbert W. Bowman

Sworn to and subscribed before me this 21st day of March, 1987.

/s/ Signature illegible
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

No. 83-96-CIV-3

ROBERT T. DARDEN,
PLAINTIFF,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
NATIONWIDE MUTUAL LIFE INSURANCE COMPANY,
DEFENDANTS.

PLAINTIFF AND DEFENDANTS' STIPULATIONS AS TO FINDINGS OF FACT

(Filed: April 5, 1989)

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1. Robert T. Darden ("Darden") brought suit on November 8, 1983 pursuant to Section 1132(a)(1)(B) of the Employee Retirement Income Security Act ("ERISA", 29 U.S.C. § 1001, *et seq.*), alleging that Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, and Nationwide Life Insurance Company ("Nationwide") violated the nonforfeitability requirement of ERISA (29 U.S.C. § 1053(a)), by declining to pay sums allegedly due him under the provisions of Nationwide's "Agent's Security Compensation Plan."

2. From September 9, 1960 until November 20, 1980, Darden was an insurance agent for Nationwide.

3. During this period, Darden and Nationwide entered into a series of eight written agent's agreements, the most recent of which became effective January 1, 1977 ("Agent's

Agreement"). The Agent's Agreement provided that Darden was to exclusively represent Nationwide.

4. Each of the contracts entered into between Darden and Nationwide since 1969 has provided for Darden's participation in the Agent's Security Compensation Plan ("ASCP").

5. The ASCP consists of two parts: the Deferred Compensation Incentive Credits ("DCIC") and the Extended Earnings.

6. Participation in the ASCP is limited to those agents with at least five years of service with Nationwide.

7. Under DCIC, Nationwide annually credits an agent a specified percentage of his original and renewal service fees earned each year after he becomes eligible for the ASCP.

8. With respect to Extended Earnings, Nationwide pays an agent an amount equal to his renewal service fees during the last full twelve (12) months preceding cancellation of his agency agreement.

9. Darden was solely responsible for all business expenses including office expenses, salaries of his employees, utilities, overhead items, automobile expenses and the costs of his insurance license. Furthermore, Darden was not entitled to receive from Nationwide any sick leave, annual leave, vacation pay, jury duty pay or any other fringe benefits to which Nationwide's employees were entitled.

10. Darden was compensated through commissions, rather than through a salary. He paid his business expenses out of his commissions, including office maintenance and utilities and salaries of clerical staff. Darden owned the building housing his agency's offices and the furniture used therein, as well as an automobile maintained for business purposes. Darden received his commissions without deduction by Nationwide for income taxes or other charges.

11. Nationwide did not furnish to Darden, nor pay the premiums for any life insurance, health insurance or disability insurance on Darden or any member of his family or any of his employees.

12. Nationwide maintained a qualified retirement plan for its employees during the entire time that Darden represented Nationwide. Darden was not entitled to participate in that plan.

13. Darden had complete discretion to hire and fire his own employees without any input from Nationwide, but he could not hire associate insurance agents without Nationwide's approval.

14. Darden purchased eight life insurance contracts with a total cash surrender value as of 1980 of $22,300. In addition, he acquired a retirement annuity which will mature in the year 2004 with a cash surrender value as of 1980 of $9,400. As of 1980, Darden held shares in mutual funds totalling $33,267. In addition to these funds, Darden also had deposits at several banks of approximately $27,000. Between 1976 and 1980, Darden made deductible contributions to an individual retirement account totally [sic] $7,490.

15. As of November 1980, Darden's personal net worth, disregarding the ASCP, the value of his agency and other assets owned separately by his wife, was approximately $450,000.

16. As a Nationwide agent, Darden was free to solicit the customers he desired and he was also free to select the types of Nationwide insurance he sold and the customers he solicited.

17. Although Darden sold several product lines (including life, homeowner and commercial insurance), his predominant market was automobile insurance, which constituted about 45-50 percent of his business. For the years 1977 through 1980, 58%, 49%, 51% and 49%, re-

spectively of all auto insurance commissions was "ceded" to the North Carolina Reinsurance Facility. If a driver posed such a risk that he failed to meet Nationwide's standards, his policy would be "ceded" to the Reinsurance Facility.

18. By virtue of the location and marketing practices he chose to utilize in the 1970s, Darden attracted an unusual amount of ceded business.

19. Under Paragraph 9 of the Agent's Agreement, the agent or Nationwide had the right to cancel the Agreement at any time after written notice.

20. Section 11(f) of the Agent's Agreement provides, *inter alia*, that the liability of Nationwide to make payments under the ASCP terminates if the agent is licensed with another insurance company within one year following cancellation within a twenty-five mile radius of his prior business location; or if the agency induces policyholders to cancel or replace their Nationwide policies.

21. On December 5, 1980, only fifteen (15) days after his cancellation, Darden reopened his agency as a representative of Bankers and Shippers Company, an insurance agency operating in North Carolina.

22. Darden entered into agency agreements with Quincy Mutual Insurance Company in January 1981 and with Indiana Lumbermen's in February, 1981.

23. Darden represented these and other companies within one year of termination of his Nationwide contract in violation of Section 11(f) of his Agent's Agreement.

24. Darden continued to conduct business out of the same office which he operated while a Nationwide agent.

25. Upon cancellation, Darden mailed letters to each of the between 1200 to 1500 Nationwide customers he then represented, advising them that he represented other companies and would like to continue to service them.

26. Effective November 20, 1980, Nationwide cancelled Darden's contract.

27. Due to Darden's violation of § 11(f) of the Agent's Agreement, Nationwide terminated his benefits under the Plan. Darden filed suit against Nationwide on November 7, 1983 claiming that Nationwide's action violated ERISA's nonforfeiture provisions.

28. Among Darden's assets in November, 1980, were the following:

Asset	Estimated Value
Residence	$120,000
Rental townhouses	125,000
Rental duplex	42,000
Office building	95,000
Subject to mortgage	(33,000)
Cash value of life insurance contracts	22,300
Case [sic] value of annuity	9,400
IRA	8,400
Mutual funds	32,600
Bank deposits	27,000
Net worth	$448,700

29. The Agent's Security Compensation Plan became effective on July 1, 1969. Darden purchased the land for the townhouses and constructed the townhouses on the land prior to the effective date of the Agent's Security Compensation Plan.

30. Of all ASCP participants terminating in 1972-1980, a full 54 percent elected to receive ASCP payments in a three-year payout (the most rapid form of distribution permitted), and about another 24 percent elected four-to ten-year payouts. Only approximately 22 percent elected payout forms that assured the agency of income for life (*i.e.*, an annuity form).

31. During his service for Nationwide, Darden was eligible to maintain an H.R. 10 (Keogh) plan under the federal income tax laws.

This the 28th day of March, 1989.

/s/ Marion G. Follin, III
Marion G. Follin, III
Counsel for Plaintiff

/s/ George R. Ragsdale by Craig G. Dalton, Jr.
George R. Ragsdale
Counsel for Defendants

/s/ Craig G. Dalton Jr.
Craig G. Dalton, Jr.
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

No. 83-96-CIV-3

ROBERT T. DARDEN,
PLAINTIFF,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
NATIONWIDE MUTUAL LIFE INSURANCE COMPANY,
DEFENDANTS.

EXCERPTS FROM TRANSCRIPTS OF
PROCEEDINGS APRIL 5, 1989 THROUGH
APRIL 6, 1989

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[7] *ROBERT T. DARDEN*, BEING FIRST DULY SWORN, TESTIFIED DURING *DIRECT EXAMINATION:*

BY MR. FOLLIN:

* * * * * *

[30] Q. WHEN YOU SAY CEDED BUSINESS WHAT ARE YOU REFERRING TO; WE ARE TALKING ABOUT AUTOMOBILE INSURANCE?

A. THAT'S THE BUSINESS THAT NATIONWIDE DIDN'T TAKE VOLUNTARY AND DIDN'T WANT TO INSURE THEM SO THEY RE-INSURED THEM THROUGH THE RE-INSURANCE FACILITY OF NORTH CAROLINA.

Q. DOES NORTH CAROLINA HAVE A MANDATORY AUTOMOBILE LIABILITY INSURANCE PROGRAM?

A. YES, THEY DO.

Q. ARE YOU FAMILIAR WITH THE RULES AND REGULATIONS OF THE NORTH CAROLINA INSURANCE DEPARTMENT ABOUT WRITING AUTOMOBILE LIABILITY INSURANCE?

A. I AM TO THE PART THAT STATES THAT ONCE WE RETAIN ON A LICENSE WE WOULD HAVE TO WRITE ANYONE THAT WALKED IN OUR OFFICE, WE COULD NOT DISCRIMINATE BECAUSE OF BAD DRIVING RECORD, AGE, SEX, OR CREDIT. WE HAD TO HELP IN ANY WAY WE COULD, WE COULDN'T DENY COVERAGE.

Q. WHEN A PERSON CAME INTO YOUR OFFICE FOR AUTOMOBILE LIABILITY INSURANCE, DID THEY FILL OUT AN APPLICATION? [31]

A. YES, THEY DID.

Q. GENERALLY, WHAT INFORMATION WOULD BE ON THE APPLICATION?

A. THE PERSON'S NAME, ADDRESS, PHONE NUMBER IF THEY HAD ONE, THE TYPE OF CAR, AGE OF THE DRIVE [sic], VIOLATIONS OR ACCIDENTS AND THE TYPE OF COVERAGE THEY WERE GETTING.

Q. AFTER THE APPLICATION WAS FILLED OUT, WHAT WOULD YOU DO WITH IT.

A. IT WOULD BE LISTED ON A REPORT AND SENT TO NATIONWIDE WITH A CHECK.

Q. AND WOULD NATIONWIDE—WOULD IT BE SENT TO AN UNDERWRITER AT NATIONWIDE?

A. ONCE IT HIT THE REGIONAL OFFICE THE MONEY WENT TO THE ACCOUNTING DEPARTMENT, THE APPLICATION WENT TO AN UNDERWRITING DEPARTMENT WHERE THEY REVIEWED IT AND THEY MADE A DECISION WHETHER IT SHOULD BE CEDED OR KEPT VOLUNTARY.

Q. WHEN YOU SAY VOLUNTARY, YOU MEAN NATIONWIDE WOULD INSURE THE RISK ITSELF?

A. YES.

Q. WHEN YOU SAY CEDED YOU MEAN?

A. IT WAS INSURED THROUGH THE RE-INSURANCE FACILITY AND ALL THE COMPANIES THAT WERE LICENSED IN NORTH CAROLINA TO DO BUSINESS TO WRITE NORTH CAROLINA INSURANCE PARTICIPATED IN THE RE-INSURANCE FACILITY LOSSES AS WELL AS THEY DID THE PREMIUMS THEY INITIALLY PUT IN IT, ACCORDING TO THE [32] WORK PERCENT THEY HAD IN, AS I UNDERSTAND.

Q. WAS YOUR OFFICE LOCATED VERY CLOSE TO FT. BRAGG AND FAYETTEVILLE?

A. ABOUT A MILE AND-A-HALF.

Q. NOW, DID YOU HAVE A LOT OF APPLICANTS AND CUSTOMERS WHO WERE MILITARY PERSONNEL?

A. YES.

Q. WERE THOSE MILITARY PERSONNEL GENERAL [sic] CEDED OR VOLUNTARY, IF YOU KNOW?

A. ALL WERE CEDED, JUST ABOUT.

Q. WHY WERE THEY ALL CEDED?

A. BECAUSE THEY WERE MILITARY AND NATIONWIDE DIDN'T WANT MILITARY CEDED SINGLE GUYS.

THE COURT: CEDED POLICIES YOU ONLY GET THE STATUTORY LIMITS ON THAT; YOU CAN ONLY GET THE STATUTORY LIMITS ON CEDED BUSINESS?

WITNESS: ON CEDED BUSINESS, THAT'S CORRECT.

BY MR. FOLLIN:

Q. WAS YOUR OFFICE WRITING A GOOD DEAL OF CEDED BUSINESS AT ITS LOCATION?

A. BECAUSE OF LOCATION AND THE MILITARY PERSONNEL ON BASE.

Q. ALL RIGHT. DID NATIONWIDE DO ANYTHING TO DISCOURAGE YOU FROM SERVING MILITARY PERSONNEL?

A. ON SEVERAL OCCASIONS THEY DID, YES. I WAS TOLD BY MR. MAYO AND MR. KIKER THAT I SHOULD MOVE MY OFFICE TO THE [33] FIRST-CITIZENS BANK

BUILDING DOWNTOWN TO THE TENTH FLOOR AND I WAS ALSO TOLD BY MR. MAYO AND BILLY KIKER THAT I SHOULD CLOSE MY OFFICE FROM ELEVEN TO TWELVE-THIRTY DURING THE TIME THE MILITARY HAD OFF TO DISCOURAGE FROM WRITING ANY MILITARY. I WAS GIVEN A LIST OF QUESTIONS THAT WE SHOULD ASK OUR POLICYHOLDERS THAT WAS GIVEN TO ME BY MR. MAYO AND MR. KIKER FOR THE SECRETARIES TO ASK WHEN THEY WERE INTERVIEWING CUSTOMERS FOR INSURANCE.

Q. WHAT WAS THE POINT OF ASKING THE QUESTIONS; WAS IT TO FIND OUT THEIR DRIVING RECORD OR WHAT?

A. FIND OUT IF THEY HAD ANY ACCIDENTS OR VIOLATIONS AND WHERE THEY LIVED AND INSTRUCTED ME AS TO THE WAY WE SHOULD ASK THE QUESTIONS. MR. MAYO INFORMED ME THAT WE SHOULDN'T ASK HAVE YOU HAD ANY IN THE LAST THREE YEARS, THAT WE SHOULD ASK HOW MANY HAVE YOU HAD IN THE LAST THREE YEARS. THAT WOULD GET AN EASY YES OR NO.

Q. THAT WOULD GET AWAY FROM AN EASY YES OR NO?

A. YES.

Q. IN THE LETTER, THE SECOND PARAGRAPH REFERS—

THE COURT: LET ME SEE IF I UNDERSTAND THIS NOW.

IT WAS IN YOUR INTEREST TO CONTRACT, AS THE AGENT, NEW INSURERS, WASN'T IT?

WITNESS: YES, SIR.

THE COURT: BECAUSE THAT'S THE WAY NEW BUSINESS WAS WRITTEN? [34]

WITNESS: THAT'S CORRECT.

THE COURT: BUT IT WAS IN NATIONWIDE'S INTEREST TO ONLY CONTRACT VOLUNTARY BUSINESS OR

MAXIMIZE THE AMOUNT OF VOLUNTARY BUSINESS THEY CONTRACTED; IS THAT CORRECT?

WITNESS: THAT'S CORRECT.

THE COURT: ALL RIGHT. THANK YOU.

* * * * * *

[43] Q. LET ME ASK YOU—LET ME GO BACK. MR. DARDEN, WERE YOU AT ONE POINT TERMINATED AS AN AGENT FOR NATIONWIDE?

A. YES, I WAS.

Q. DO YOU RECALL ABOUT WHEN THAT OCCURRED?

A. NOVEMBER 1980.

Q. LET ME SHOW YOU A DOCUMENT MARKED EXHIBIT 33 AND ASK YOU WHETHER YOU CAN IDENTIFY THAT?

A. YES, I CAN. EXHIBIT 33 DATED OCTOBER 29, 1980, IS A LETTER TO ME FROM MR. BILL—WILLIAM MAYO, WHO WAS THE REGIONAL SALES MANAGER, AND INFORMED ME THEY WERE CANCELLING MY CONTRACT EFFECTIVE ON NOVEMBER 13, 1980.

Q. AND HOW MUCH NOTICE DID YOU RECEIVE OF THE CANCELLATION? DESCRIBE HOW IT OCCURRED, MR. DARDEN.

A. I WAS CALLED TO GO TO RALEIGH BY BILLY KIKER, THE DISTRICT SALES MANAGER, AND THAT MR. MAYO WANTED TO SEE ME AND I ASKED HIM AT THE TIME WHAT ABOUT AND HE SAID PROBABLY YOUR LOSS RATIO. WE AGREED TO MEET IN RALEIGH AT MR. MAYO'S OFFICE AND WHICH WE DID MEET UP THERE DURING THE COURSE OF THE CONVERSATION WHEN I WAS THERE THEY INDICATED TO ME YOUR CONTRACT HAD BEEN CANCELLED.

* * * * * *

[44] Q. GO AHEAD.

A. SO I IMMEDIATELY LEFT AND TOLD THEM TO PLEASE SEND ME SOMETHING IN WRITING WHICH THIS IS THE LETTER THAT I RECEIVED, YES.

Q. OKAY. AND NOW, THIS LETTER IN THE SECOND PARAGRAPH SAYS IF YOU HAVE NOT ALREADY DONE SO PLEASE RETURN ALL NATIONWIDE MANUALS, PORTFOLIOS, REFERENCE GUIDES, POLICIES AND OTHER SUPPLIES, POLICIES ON FILE OF DISTRICT SALES MANAGER AS SOON AS POSSIBLE?

A. I COMPLIED WITH THAT REQUEST AND GAVE ALL THE APPLICATIONS, POLICIES AND EVERYTHING I HAD ON THE POLICYHOLDERS OF MINE TO BILLY KIKER AND THE MANUALS AND EVERYTHING THEY FURNISHED ME THEY GOT BACK.

Q. YOU GAVE THEM EACH POLICYHOLDER FILE?

A. BEG YOUR PARDON?

Q. YOU GAVE THEM EVERY POLICYHOLDER FILE?

A. EVERY POLICYHOLDER FILE THEY GOT. IF I HAD IT THEY GOT IT.

Q. DID YOU KEEP A LIST OF CUSTOMERS?

A. I HAD A LIST OF CUSTOMERS, THAT'S RIGHT.

Q. HOW MANY FILES, APPROXIMATELY, DID YOU HAVE?

A. APPROXIMATELY TWELVE, FIFTEEN HUNDRED. [45]

Q. AND HOW DID—DID MR. KIKER COME TO YOUR OFFICE AND PHYSICALLY PICK THEM UP?

A. YES, HE DID, IN HIS CAR.

Q. NOW, AS A NATIONWIDE AGENT, DID YOU AGREE IN YOUR AGREEMENT YOU WOULD DELIVER THE POLICIES AND FILES TO THEM IF YOU WERE TERMINATED?

A. YES.

Q. NOW, AND IN THAT CASE—IF YOU WERE TERMINATED WAS THERE ANY WAY THAT YOU COULD—STRIKE THAT. EXPLAIN HOW AUTOMOBILE POLICIES AND HOMEOWNER POLICIES WERE RENEWED BY NATIONWIDE WHEN YOU WERE AN AGENT? WHAT WAS THE MECHANICS OF IT?

A. ONCE I ISSUED THE POLICY OR THE HOME OFFICE OF DISTRICT RALEIGH OFFICE ISSUED A POLICY, AT THE EXPIRATION DATE THEY WOULD SEND OUT A RENEWAL TO RENEW THE POLICY ON HOMEOWNERS OR AUTOMOBILE, WHATEVER TYPE OF INSURANCE IT MIGHT HAVE BEEN AND I WAS TO RECEIVE A COPY OF THE RENEWAL NOTICE AND THEY WOULD PAY THE PREMIUM TO ME OR DIRECTLY TO THE COMPANY.

Q. SO THE RENEWAL NOTICE WOULD BE SENT OUT BY NATIONWIDE; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND THE BILL—NORMALLY THE CHECK WOULD BE—THE POLICY WOULD BE SENT STRAIGHT BACK TO NATIONWIDE?

A. MOST OF THE TIME BUT SEVERAL PEOPLE COME BY THE OFFICE AND PAY IF IT'S CONVENIENT SO I WOULD COLLECT IT AND SEND [46] IT TO NATIONWIDE.

Q. ARE YOU FAMILIAR WITH THE TERM EXPIRATIONS?

A. YES.

Q. WHAT DOES IT MEAN TO YOU?

A. DEALING WITH NATIONWIDE, THE EXPIRATION IS THE POLICIES THAT ARE ON MY OFFICE OR IN MY OFFICE THAT I HAVE WRITTEN AND THAT HAVE AN EXPIRATION DATE AND THEY ARE CONTROLLED AND OWNED BY NATIONWIDE.

Q. NOW, AS NATIONWIDE'S AGENT—COULD YOU SELL YOUR EXPIRATIONS TO ANOTHER AGENT TO TAKE OVER YOUR OFFICE?

A. NO.

Q. NOW, YOU'RE WHAT'S CALLED AN INDEPENDENT AGENT; IS THAT CORRECT?

A. YES, I AM AN INDEPENDENT AGENT.

Q. NOW, DO YOU HAVE EXPIRATIONS AS AN INDEPENDENT AGENT?

A. I DO.

Q. AND COULD YOU SELL THOSE EXPIRATIONS IF YOU WANTED TO TO SOMEONE TO TAKE OVER YOUR OFFICE?

A. YES, I COULD.

Q. IS THERE SOME PRICE OR VALUE TO THOSE EXPIRATIONS?

A. I THINK THE AVERAGE PRICE IS NOW ROUGHLY TWO AND-A-HALF TIMES THE RENEWAL COMMISSION OF THE PREVIOUS YEAR.

Q. NOW, AS AN INDEPENDENT AGENT, IS THAT SOMETHING THAT YOU RECENTLY PLANNED TO DO WHEN YOU RETIRED AND SOLD YOUR AGENCY? [47]

A. EVENTUALLY I WILL UNLESS I DECIDE TO GIVE IT TO SOMEBODY.

Q. WOULD YOU USE THE MONEY YOU GOT ON THE SALE TO HELP YOU RETIRE?

A. I WOULD.

THE COURT: COULD YOU HAVE SOLD YOUR NATIONWIDE AGENCY IF YOU WERE A NATIONWIDE AGENT?

WITNESS: NO SIR, BECAUSE THEY OWN ALL OF YOUR EXPIRATIONS.

BY MR. FOLLIN:

Q. AFTER YOU WERE TERMINATED AS A NATIONWIDE AGENT, WHAT DID YOU DO? DID YOU SET UP YOUR OWN OFFICE?

A. I SET UP MY OWN INDEPENDENT OFFICE, MADE CONTACT WITH SEVERAL COMPANIES AND RECEIVED LICENSEES WITH THOSE AND STARTED WRITING INSURANCE, OR KEPT WRITING INSURANCE.

Q. DID YOU WRITE OUT OF THE SAME OFFICE?

A. SAME LOCATION.

Q. DID YOU SEND A LETTER TO THE CUSTOMER LIST; YOU HAD SOME KIND OF LETTER TO THEM TELLING THEM THIS?

A. YES, I SENT OUT A LETTER TO ALL THE ONES I HAD THE ADDRESSES FOR AND EXPLAINED THAT I WAS NO LONGER A NATIONWIDE AGENT AND THAT I WAS AN INDEPENDENT AGENT AND STILL IN THE INSURANCE BUSINESS AND IF I COULD BE OF SERVICE TO THEM THEY COULD CALL ME.

Q. NOW, OUT OF THOSE TWELVE TO FIFTEEN HUNDRED POLICIES [48] YOU HAD AS A NATIONWIDE AGENCY, APPROXIMATELY HOW MANY RENEWED THEIR POLICIES WITH YOU WHEN YOU BECAME AN INDEPENDENT AGENT; DO YOU HAVE AN ESTIMATE?

A. PROBABLY A HUNDRED OR TWO HUNDRED. OF COURSE, MOST OF THEM ARE YOUR FRIENDS AND THE PEOPLE THAT I KNEW AND PLAYED GOLF WITH OR WENT TO CHURCH WITH OR RELATIVES, WHATEVER. THEY WENT WITH ME ANYWAY REGARDLESS OF WHAT COMPANY I WAS WITH AND THEY WERE DEDICATED PEOPLE.

Q. YOU KNOW WHAT NATIONWIDE DID WITH THE REST OF THEM, WITH THE BALANCE OF THE TWELVE OR FIFTEEN HUNDRED POLICIES?

A. AFTER A PERIOD OF MONTHS THEY WERE DISTRIBUTED AMONG THE AGENTS IN DISTRICT NINETEEN. THEY WERE GIVEN ALL THE BUSINESS I HAD. THEY WERE DISTRIBUTED AMONG FOUR OR FIVE AGENTS, I BELIEVE. THEY MAY HAVE EVEN HIRED ONE AGENT TO TAKE SOME OF IT. I'M NOT SURE.

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[DARDEN-CROSS] [75]

Q. YOU EXERCISED YOUR FUNDAMENTAL RIGHT UNDER YOUR AGENT'S AGREEMENT AND REFUSED TO FOLLOW HIS SUGGESTION?

A. ON THAT ONE INSTANCE.

Q. YOU PUT YOUR FOOT DOWN AND SAID I DON'T HAVE TO DO THAT AND I'M NOT GOING TO DO THAT?

A. I TOLD HIM I DIDN'T WANT TO CLOSE MY OFFICE.

Q. AND YOU NEVER DID IT, DID YOU?

A. NO.

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[160] *GEORGE W. FRANK* [SIC], BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWED DURING *DIRECT EXAMINATION*:

BY MR. RAGSDALE:
[FRINK-CROSS] [193]

Q. WERE YOU PRESENT AT ALL THE MEETINGS OR ANY OF THE MEETINGS THAT TOOK PLACE WITH THE AGENTS' ADVISORY COUNCIL IN '67 AND '68?

A. YES.

Q. AND HAVE YOU ATTENDED SUBSEQUENT AGENTS' MEETINGS?

A. I ATTENDED ALL OF THEM EXCEPT FOR A FIVE-YEAR PERIOD, '75, LATE '75 THROUGH 1980.

Q. LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED AS AN EXHIBIT, EXHIBIT NO. 28, IT'S 1978 AGENTS' ADVISORY COUNCIL MINUTES?

A. THAT'S ONE OF THOSE. I WAS NOT THERE.

Q. IF YOU WILL TURN TO THE THIRD PAGE, THERE'S A LIST OF PEOPLE WHO WERE THERE. DO YOU SEE THAT?

A. YES.

Q. DO YOU SEE MR. JOHNNY FISHER PRESENT, GENERAL MANAGER?

A. YES.

Q. WAS HE THE CHIEF EXECUTIVE OFFICER AT THAT TIME OF THIS COMPANY?

A. HE WAS CHIEF OPERATING OFFICER.

Q. BUT HE WOULD BE THE SENIOR PERSON THAT WAS PRESENT AT THIS MEETING; WAS HE NOT?

A. YES.

Q. AND IN A MEETING LIKE THIS, DO THEY VOTE AND EVERYBODY ACCEPT THE MAJORITY VOTE OR DOES SOMEBODY LIKE MR. FISHER [194] MAKE THE DECISION?

A. I NEED TO UNDERSTAND THE QUESTION.

Q. THIS AGENTS' ADVISORY COUNCIL MEETS AND AFTER THE MEETING IS OVER WHO DECIDES WHAT'S DONE?

A. I WOULD SAY MR. FISHER.

Q. MR. FISHER DOES, RIGHT?

A. OR COULD BE THE BOARD, DEPENDING ON THE ISSUE INVOLVED.

Q. THE BOARD OF DIRECTORS?

A. RIGHT.

THE COURT: WAS THE ISSUE OF FORFEITABILITY OF THESE BENEFITS, TO YOUR KNOWLEDGE, EVER DISCUSSED AT ANY OF THESE ADVISORY MEETINGS?

WITNESS: NOT SINCE IT WAS PUT IN PLACE.

BY MR. FOLLIN:

Q. LET ME ASK YOU A QUESTION. NOW, ARE THE PEOPLE LISTED THERE, THERE'S A WARREN H. RADNOR, VICE-PRESIDENT MARKETING SERVICES?

A. YES, RIGHT.

Q. WAS HE YOUR PREDECESSOR IN YOUR JOB?

A. HE WAS ONE. THERE WAS ONE BETWEEN US.

Q. SO AT ONE TIME MR. RADNOR HELD THE JOB YOU HELD, JUST UNTIL RECENTLY?

A. YES.

Q. HE WOULD BE THE PERSON RESPONSIBLE AND WOULD KNOW WHAT'S GOING ON WITH THIS AGENTS' SECURITY COMPENSATION [195] PLAN; WOULD HE NOT?

A. AT THIS POINT, YES.

Q. NOW, IF YOU WILL TURN TO PAGE NINE OF THESE MINUTES. DO YOU SEE THE AGENT COMPENSATION AND UNDER THE AGENTS' SECURITY COMPENSATION PLAN IT SAYS ISSUES FROM FIVE REGIONS WHERE AGENTS WERE DIRECTLY CONCERNED WITH CHANGING THE FORMULA TO EXTEND THE FIRST RECOMMENDATION INCLUDES AN INCREASE AT RETIREMENT TO AN AMOUNT EQUAL TO TWENTY-FOUR MONTHS RENEWALS AND PAYMENT PERIODS OF FIVE YEARS. WAS THAT RECOMMENDATION EVER ADOPTED?

A. NO.

Q. SECOND RECOMMENDATION WAS INCREASE EXTENDED EARNINGS TO BOTH RETIREMENT AND DISABILITY TWO TIMES THE PREVIOUS YEAR RENEWALS AND CHANGE FORMULA TO INCLUDE NEW AND RENEWAL COMMISSIONS; IS THAT THE RECOMMENDATION ADOPTED?

A. NO.

Q. THIRD RECOMMENDATION INCREASE EXTENDED EARNINGS TWO TIMES RENEWALS BASING RENEWALS ON THE LAST FIVE YEARS OF SERVICE, THROWING OUT THE BEST AND AVERAGING THE OTHER THREE; WAS THAT ADOPTED?

A. NO.

Q. THE FOURTH RECOMMENDATION IS TO INCREASE EXTENDED EARNINGS BEYOND ONE YEAR, BASED UPON DOLLARS SAVED, PAYING FIFTY PERCENT RENEWAL RATE FOR FOUR YEARS INSTEAD OF TWO YEARS; WAS THAT ADOPTED? [196]

A. NO.

Q. THE LAST RECOMMENDATION WAS INCREASE EXTENDED EARNINGS BY INCLUDING BOTH NEW AND RENEWAL COMMISSIONS FOR PRECEDING TWELVE MONTHS AND PAY TWO YEARS INSTEAD OF ONE; WAS THAT ADOPTED?

A. NO.

Q. THEN THE NEXT PARAGRAPH SAYS IN CONJUNCTION WITH THESE RECOMMENDATIONS THERE WAS CONCERN EXPRESSED REGARDING VESTING OF DEFERRED COMPENSATION; DO YOU SEE THAT?

A. YES.

Q. ONE GENTLEMAN FELT THAT ANY DEFERRED COMPENSATION INCENTIVE CREDITS SHOULD BE FULLY AND PERMANENTLY VESTED. GOES ON TO SAY NO LOSSES POSSIBLE THROUGH EITHER QUALIFIED OR NON-QUALIFIED CANCELLATION OF THE AGENTS' AGREEMENT, CORRECT?

A. THAT'S WHAT I SAID.

Q. AND MR. WAGNER RESPONDED, DIDN'T HE, YOU WANT TO READ HIS RESPONSE INTO THE RECORD PLEASE?

A. MR. WAGNER RESPONDED REGARDING THE VESTING OF DCIC, HE EXPLAINED THE AGENTS' COMPENSATION PLAN IS A NON-QUALIFIED PLAN AS FAR AS THE IRS IS CONCERNED, SINCE THERE'S NO EMPLOYEE/EMPLOYER RELATIONSHIP. FUNDS ARE SET ASIDE FOR THE PAYMENT OF BOTH DCIC AND EXTENDED EARNINGS. THE DCIC BENEFITS EARNED BY THE AGENTS ARE FUNDED ANNUALLY BY DEPOSITING IT, PRESENT DOLLAR VALUE OF THE FUTURE [197]BENEFIT GROUP ANNUITY CONTRACT IN A LIFE—THESE FUNDS—ASSETS WOULD BE SUBJECT TO THE CLAIMS OF ALL CREDITORS IN THE EVENT OF SEVERE FINANCIAL CRISIS IN THE COMPANY. SUCH FUNDS CANNOT BE FULLY PROTECTED FROM CREDITORS UN-

DER A NON-QUALIFIED PLAN. THEY ARE FULLY PROTECTED AS—THEY ARE AS FULLY PROTECTED AS THEY CAN BE.

Q. YOU WANT TO READ THE NEXT PARAGRAPH?

A. THE COMPANIES HAVE NO INTENTION OF MAKING AGENTS' SECURITY PAYMENTS AND THEN PERMITTING THE AGENTS TO COMPETE WITH THE COMPANIES FOR THE BUSINESS IN THE PORTFOLIO. THE INDEPENDENT CONTRACTOR OR AGENT CAN CHOOSE TO COMPETE FOR THE BUSINESS AND FOREGO THE BENEFIT PAYMENTS OR ACCEPT THE BENEFITS AND NOT COMPETE.

Q. THAT'S A PROVISION IN THIS AGREEMENT SINCE 1969?

A. RIGHT.

Q. IT'S NEVER BEEN CHANGED, HAS IT?

A. NO.

Q. AND EVERY AGENT SINCE SIGNED THESE SAME AGREEMENTS?

A. RIGHT.

Q. NO DIFFERENCE IN ANY AGENT'S AGREEMENT EXCEPT A GEOGRAPHICAL STATE LAW AGREEMENT?

A. THAT'S RIGHT.

Q. SO THEY NEVER CHANGED THE PROVISION THAT AN AGENT FORFEITS HIS EXTENDED EARNINGS AND HIS DEFERRED COMPENSATION IF HE COMPETES WITH THE COMPANY AS SET OUT IN THE AGREEMENT? [198]

A. THAT'S CORRECT.

Q. AND THIS REPRESENTS A REQUEST THAT IT BE CHANGED; DOES IT NOT?

A. IT DOES.

Q. SO NOW YOU KNOW A REQUEST WAS MADE AND IT WAS DENIED,WASN'T IT?

A. RIGHT.

Q. YOU SAID MR. WAGNER SAID THEY HAD NO INTENTION OF MAKING THAT CHANGE?

A. THAT'S RIGHT.

Q. AND THAT'S YOUR UNDERSTANDING OF WHAT THE POSITION OF NATIONWIDE IS; IS IT NOT?

A. YES.

Q. NOW, IF YOU WILL GO TO THE NEXT PARAGRAPH. IT SAYS, ANOTHER DELEGATE STATED THE AGENTS IN HIS REGION FELT A RETIRING AGENT SHOULD HAVE THE RIGHT TO NEGOTIATE A SEPARATE AGREEMENT BETWEEN THE RETIRING AGENT AND ANOTHER NATIONWIDE PURCHASING AGENT WOULD BE THE ONE WHO'S QUALIFIED AND IT'S UP TO THE ADDITIONAL EXPERIENCE COULD BE HELD AT A MAXIMUM ONE AND-A-HALF TIMES THE EXTENDED EARNINGS. NOW, MR. WAGNER RESPONDED TO THAT SUGGESTION. READ HIS RESPONSE INTO THE RECORD, WHICH IS THE NEXT PARAGRAPH.

A. MR. WAGNER RESPONDED THAT EXTENDED EARNINGS IS ONLY ONE PART OF THE AGENTS' SECURITY COMPENSATION PLAN. THE [199] PLAN WAS DESIGNED IN PART TO PROVIDE RETIREMENT DOLLARS FOR THE AGENTS. HE POINTED OUT THAT IT WAS NOT FAIR TO COMPARE THE NATIONWIDE AGENTS' COMPENSATION PLAN WITH THE AGENCY PURCHASE WHICH OCCURS IN THE AMERICAN AGENCY SYSTEM. THE EXTENDED EARNINGS ISSUE, AS PRESENTED, IS ONLY ONE PART OF THE AGENTS' SECURITY COMPENSATION PLAN. THE TOTAL PLAN, INCLUDING DCIC, SHOULD BE CONSIDERED IN ANY RE-EVALUATION. AS FAR AS AN AGENT NEGOTIATING WITH SOMEONE ELSE IN ORDER FOR A CONTRACT TO EXIST, THERE MUST BE AGENT OWNERSHIP OF THE BUSINESS. HE SAID THAT AT NATIONWIDE THAT WAS NOT THE CASE AND THERE WAS NO POSSIBILITY OF THAT OCCURRING.

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[202] Q. LET ME SHOW YOU A COPY OF PLAINTIFF'S EXHIBIT 38, MR. FRANK [sic] THIS APPEARS TO BE A PROGRAM OUTLINE FOR A MEETING OF NATIONWIDE AGENTS WHICH WAS TO BE HELD SOME TIME IN 1980; IS THAT CORRECT?

A. RIGHT.

Q. AND IT DIRECTS THE PERSON WHO IS PRESIDING—THE POINT OF THE DOCUMENT IS TO DIRECT THE PERSON PRESIDING OVER THE MEETING TO GIVE THEM AN OUTLINE OF WHAT TO DO AT THE MEETING?

A. RIGHT.

Q. IT WAS GENERATED AT THE HOME OFFICE, WAS IT NOT?

A. YES.

Q. AND IF YOU WILL TURN TO PAGE TWO OF THE MEETING OUTLINE.

A. YES.

Q. YOU WILL NOTICE TOWARD THE MIDDLE OF THE PAGE THERE'S A PARAGRAPH THAT SAYS NOTE, AND IN ALL CAPS; DO YOU SEE THAT?

A. RIGHT.

Q. AND IN A SECTION THAT PERTAINS TO HANDING OUT A REVISED AGENTS' AGREEMENT FOR THE AGENTS TO SIGN; IS IT NOT? [203]

A. IT SAYS TWO COPIES. ABOVE THAT, SIGNED AGREEMENTS ARE AVAILABLE FOR EACH AGENT.

Q. RIGHT. SO IS A COPY GIVEN TO THE AGENT AND THE DISTRICT SERVICE MANAGER SIGNED A COPY ALSO; IS THAT CORRECT?

A. CORRECT.

Q. AND THE NOTE SAYS, AS IN THE PAST OUR POSITION WILL BE THAT ANY AGENT REFUSING TO SIGN

THE NEW AGREEMENT WILL HAVE HIS OR HER EXISTING AGREEMENT CANCELLED AS OF JANUARY 1, 1981; IS THAT CORRECT?

A. CORRECT.

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[207] MR. RAGSDALE:

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HAROLD A. TOLAR, BEING FIRST DULY SWORN, TESTIFIED AS [208] FOLLOWS DURING *DIRECT EXAMINATION*: [209]

Q. ARE YOU FREE TO OPERATE YOUR AGENCY IN ANY MANNER IN WHICH YOU CHOOSE?

A. WITHIN THE GUIDES, YES, SIR; WITHIN THE GUIDELINES OF OF [sic] THE STATE OF NORTH CAROLINA.

Q. ALL RIGHT. YOU ARE NOT ALLOWED TO BREAK THE LAW BUT OTHERWISE IT'S YOUR AGENCY TO DO AS YOU WANT?

A. PRETTY MUCH SO, YES, SIR.

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[230] MR. RAGSDALE: I CALL MR. RICHARD STEWART.
RICHARD E. STEWART, BEING DULY SWORN TESTIFIED AS FOLLOWS DURING *DIRECT EXAMINATION*:

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[236] BY MR. RAGSDALE:

Q. WELL, MR. STEWART, CONTINUE ALONG THAT TRAIN OF THOUGHT AND DESCRIBE, IF YOU WOULD, FOR JUDGE BOYLE, IN COLLOQUY QUESTIONING WITH HIM WHAT THE DETAIL AND THE FOCUS AND THE INGREDIENTS OF THE DCIC ASPECT OF THIS PLAN ARE VERSUS THE TRADITIONAL INGREDIENTS AS ELEMENTS OF A PENSION PLAN.

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[237] THEIR THIRD OBJECTIVE, AFTER GROWING AND TRAINING PEOPLE TO BECOME CAREER AGENTS, WAS TO GIVE THE AGENT THE ECONOMIC EQUIVALENT OF

WHAT HE WOULD HAVE IF HE HAD BEEN AN INDEPENDENT AMERICAN AGENT—AMERICAN SYSTEM AGENT, BUT THEY HAD TO DO THAT WITHOUT GIVING UP THE KEY THING THAT DISTINGUISHES A NATIONWIDE/STATE FARM GROUP-TYPE EXCLUSIVE AGENT FROM AN AMERICAN AGENCY SYSTEM AGENT AND THAT IS IN THE NATIONWIDE-TYPE SYSTEM THE AGENT DOES NOT OWN THE EXPIRATIONS; MAYBE THE COMPANY DOES OR WITH NATIONWIDE, NOBODY DOES.

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[3] *DALE W. SPIEGELBURG*, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWED DURING *DIRECT EXAMINATION:*

BY MR. RAGSDALE:

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[4] Q. WERE THE AGENTS PLEASED WITH THAT PLAN?

A. THEY WERE TOTALLY UNHAPPY WITH IT BECAUSE IT COMPENSATED THE LOW-END AGENT, THE AGENT THAT WASN'T PRODUCING. YOU WANT ME TO GO FURTHER?

Q. YES, I WANT YOU TO TELL JUDGE BOYLE—I WANT YOU TO TELL HIM THE STORY. I WILL ASK YOU ONE QUESTION AND YOU TELL THE STORY. TELL JUDGE BOYLE THE STORY OF THE GA 103 [5] PLAN, WHY THE AGENTS DIDN'T LIKE IT AND HOW THE AGENTS' SECURITY COMPENSATION PLAN WAS BORN.

A. THE FORMER RETIREMENT PLAN THAT WAS IN PLACE FOR THE COMPANY AT THAT TIME WAS A PLAN THAT COMPENSATED FOR THE FIRST TEN THOUSAND DOLLARS OF INCOME. AN AGENT COULD PARTICIPATE TWO PERCENT IN THE COMPANY. MAXIMUM PARTICIPATION WAS SIX PERCENT. AS I SAID, IT COMPENSATED ONLY FOR THE FIRST TEN THOUSAND DOLLARS. THE AGENTS IN THE FIELD WERE TOTALLY UNHAPPY THAT NO MATTER HOW HARD THEY WORKED THEY COULDN'T BUILD CREDITS OR SAVINGS FOR THE FUTURE.

IN 1967 IT WAS CONCEIVED BY THE HOME OFFICE AND THE AGENTS' ADVISORY COUNCIL A PLAN TO COMPENSATE THE AGENTS THAT REALLY WANTED TO WORK AND GROW. AND FROM THIS EFFORT, BACK IN 1967 THROUGH 1968 AND '69 WHEN I BECAME A MEMBER OF THE COUNCIL, THIS PLAN WAS BORN. IT WAS BROUGHT BACK TO THE AGENTS' COUNCIL FOR CRITICISM, CORRECTION, FURTHER ADOPTION. IT WAS PURIFIED TO THE POINT THAT WE TOOK IT TO THE FIELD AND INTRODUCED IT TO AGENTS TO GET THEIR REACTION FROM IT. AFTER THAT REACTION WE HAD SPECIAL MEETINGS BACK AT THE HOME OFFICE TO TELL THE OFFICERS OF THE COMPANY REALLY WHAT THE AGENTS IN THE FIELD FELT ABOUT THE PROGRAM.

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[9] Q. DO YOU HAVE ANY PERSONAL OBJECTIONS TO TELLING JUDGE BOYLE THE EXTENT AND NATURE OF THOSE CREDITS?

A. WITHOUT THE YEAR 1988 THERE, BECAUSE I HAVEN'T RECEIVED THE 1988 STATEMENT YET, BUT AT THE END OF 1987 I HAD JUST UNDER SEVEN HUNDRED THOUSAND DOLLARS OF CREDITS.

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